

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



OPINION 80-68A

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3(4)  
3(5)

DEC 1 1980

Mr. Theodore E. Rhodes  
Miller & Chevalier  
1700 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Rhodes:

This is in reply to your letter of November 21, 1979, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Professional Insurance Agents Group Insurance Trust Fund (the Fund) is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

You represent that the Fund was created in May 1960, under its original name of the National Association of Mutual Insurance Agents Group Insurance Trust Fund by the National Association of Mutual Insurance Agents (now known as the National Association of Professional Insurance Agents (the Association) to create a trust for procuring a program of life and health benefits for eligible employers and employees. The declaration of trust of May, 1960, states that its purpose is to provide group insurance to members of the Association and their employees. Article II Section 1 of the trust declaration defines the term "employer" to include any individual principally engaged in the insurance business and who is a member of the Association. Article I Section 1 of the Association bylaws provides for the following four classes of members:

1. Active - individuals in the independent insurance agency business who either in their own name or in the name of the agency with which they are associated represent one or more insurance companies. At least one person per agency is designated as the Active Member. Each additional member from that agency is reported as an "additional" member but has the same right to vote or hold office as the Active Member.
2. Associate - officers, representatives or other employees of insurance companies or other organizations operated under the American Agency System or any individual affiliated directly or indirectly with the insurance business.
3. Honorary - persons rendering notable service to the insurance industry and elected by unanimous vote of the Directors to such membership.
4. Auxiliary - office employees of any member agency.

You represent that due to the category of "additional" Active members there are no Auxiliary members. Additionally you represent that there are no Associate members and only ten Honorary members. According to Article IV Section 1(a) of the trust declaration, an employer member of the Association who wishes to obtain any of the benefits offered by the Fund, either for himself or for employees of his agency, must make a request for such participation to the Fund Trustees. Although member agencies are required by the Fund to assume some portion of the premium cost, participants may be required by their agency to contribute a portion of the cost also.

Section 3(1) of ERISA defines an employee welfare benefit plan as:

.... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained

for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

Although the Fund does provide benefits among those enumerated in section 3(1)(A), in order to be an employee welfare benefit plan, the Fund must, among other criteria, be established or maintained by an employer, an employee organization, or both, for the purpose of providing these benefits to participants.

Sections 3(4) and 3(5) of ERISA define the terms "employee organization" and "employer" respectively.

Section 3(4) of ERISA defines the term "employee organization" to mean any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

Section 3(5) of ERISA defines the term "employer" to mean any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

The Association would not constitute an employee organization within the first part of the definition (before the semi-colon) contained in section 3(4) since, according to your representation, it does not exist for the purpose of dealing with employers on behalf of employees concerning either an employee benefit plan or other matters incidental to employment relationships. Additionally, the Association is not an employees' beneficiary association as that term has been interpreted by the Department of Labor under the second part of the definition. One of the criteria used by the Department in determining whether an organization is an employees' beneficiary association is that there must be a commonality of interest among members with respect to their employment relationship. For example, membership may be limited to employees of a certain employer or employers, or to members of one particular union. We do not express an opinion as to whether membership in the same profession or business, in this case the independent insurance agency business, satisfies the commonality of interest criterion. In either event, the Association is not an employees' beneficiary association for the reason that employees, in their capacity as employees, do not control the Association's affairs. Rather, Active and "additional" members of the Association have equal rights and equal voting power without regard to their status as employees or employers. Thus, neither employees nor employers, as such, control the Association.

It is the position of the Department of Labor that the Association is not, in relation to the Fund, an employer within the meaning of section 3(5). The Association is not the employer of all the participants in the Fund nor is the Association a group or association of employers acting for an employer in such capacity as defined in section 3(5) of ERISA. The Department has taken the position that, in order for any group or association to satisfy this definition, it must be a bona fide association of employers, subject to the control of its employer members. As stated above, the Association is controlled by neither employees nor employers, but rather by Active and "additional" members having equal rights and voting power.

Therefore, it is the position of the Department of Labor that the Professional Insurance Agents Group Insurance Trust Fund is not an employee welfare benefit plan within the meaning of ERISA section 3(1). However, if an employer within the meaning of ERISA section 3(5) adopts the Fund for the purpose of providing health benefits for its employees, that employer may have established an employee welfare benefit plan with regard to such employees.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff  
Administrator of Pension and Welfare Benefit Programs